



COPY

Nos. 602, 603

In the Supreme Court of the United States

OCTOBER TERM, 1941

STATE OF ALABAMA, PETITIONER

v.

KING & BOOZER, A PARTNERSHIP COMPOSED OF TOM COBB KING AND SIMON ELBERT BOOZER, AND THE UNITED STATES OF AMERICA, INTERVENER

JOHN C. CURRY, INDIVIDUALLY AND AS COMMISSIONER OF REVENUE OF THE STATE OF ALABAMA, PETITIONER

v.

UNITED STATES OF AMERICA AND DUNN CONSTRUCTION COMPANY, INC., AND JOHN S. HODGSON AND COMPANY

ON PETITIONS FOR WRITS OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF ALABAMA

MEMORANDUM FOR THE RESPONDENTS



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The respondents join in the petitions for writs of certiorari.

The Supreme Court of Alabama held in the *King & Boozer* case that a contractor, building a tent camp at Fort McClellan for the United States

under a cost-plus-a-fixed-fee contract, was exempt from the state sales tax in making its purchases of material used in the construction. It similarly held in the *Dunn Construction* case that the same contractor was exempt from the state tax upon the storage, use or consumption of personal property. The decisions present questions of importance and urgency.

The current defense program involves a very large volume of work, performed in every state of the union, by cost-plus-a-fixed-fee contractors. A preliminary and rough advance estimate indicates that the imposition of state sales and use taxes may result in a tax liability of about \$100,000,000 a year with respect to the Government's construction and supply program undertaken through cost-plus-a-fixed-fee contractors. An authoritative determination of the difficult constitutional and statutory questions upon which turn the issue of liability or immunity is extremely desirable.

Wherefore, it is respectfully submitted that these petitions for a writ of certiorari should be granted.

CHARLES FAHY,
Acting Solicitor General;
FRED L. BLACKMON,
Attorney for King & Boozer.

SEPTEMBER 1941.

¹ Both the United States and the partnership of Dunn Construction Company, Inc., and John S. Hodgson and Company are represented by the Department of Justice in this proceeding.

